Nova Scotia

ANNUAL REPORT

for the year ending
March 31, 2003

Workers' Compensation Appeals Tribunal

103-06123/

Nova Scotia

ANNUAL REPORT

for the year ending
March 31, 2003

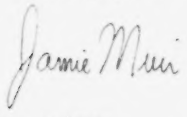
Workers' Compensation Appeals Tribunal

To Her Honour
The Honourable Myra A. Freeman
Lieutenant-Governor of Nova Scotia

May It Please Your Honour:

I have the honour to submit the Annual Report of the Workers' Compensation Appeals Tribunal for the fiscal year ending March 31, 2003.

Respectfully submitted,



Jamie Muir
Minister of Justice

Jamie Muir
Minister of Justice

Dear Honourable Minister:

The Workers' Compensation Appeals Tribunal is pleased to present its Annual Report for the fiscal year ending March 31, 2003.

Respectfully submitted,

K Carrigan

Katherine F. Carrigan
Chief Appeal Commissioner

Contents

Planning for Change: Report of the Chief Appeal Commissioner 9

Organizational Chart 14

Workers' Compensation Review 15

Workplace Safety and Insurance System Strategic Planning 18

WCAT Strategic Planning 20

Developments in the Law

- Chronic Pain 22
- Permanent Impairment 24
- Commutation of Pension 24
- Supplementary Benefits 25
- Earnings Replacement Benefits 25
- Practice and Procedure Before the Tribunal 26
- Reconsideration of Final Decisions of the Board 27
- Determinations as to Whether Right of Action is Barred 27
- Other Decisions of Note 28

Appeal Management 32

Appeal Statistics 35

Appeals and Judicial Review Proceedings from WCAT Decisions 37

Development of Practice Directions 41

Professional Development and Training 44

Looking Ahead: Developing and Meeting Tribunal Goals in 2003-04 45

Budget Expenditures for the Fiscal Year Ending March 31, 2003 48

Other Charts and Statistics 49

Planning for Change

REPORT OF THE CHIEF APPEAL COMMISSIONER

In many respects, our experience of the past year was similar to that of the year before: appeal volumes, decision output, appeal issue type, appeal outcomes, and worker representation were closely aligned with the figures for 2001–02. We received 927 appeals this year, as compared with 1006 the year before, and issued 831 decisions, as compared with 830 last year. In other fundamental ways, however, the Tribunal matured and faced new challenges in 2002–03. The year was marked by three major undertakings which impacted Appeal Commissioners and staff, alike: strategic planning for the Workers' Compensation System (referred to as the Workplace Safety and Insurance System); strategic planning for WCAT itself; and a review of WCAT's appeal management functions, under the project title "Case Management Review."

Through our core work—the resolution of appeals by way of fair hearings and reasoned decisions—the Tribunal continued to develop principles applicable to the adjudication of a variety of issues, including

- transition between temporary and permanent conditions
- interpretation of American Medical Association Guides to Permanent Impairment
- commutation of pension
- review of extended earnings replacement benefits
- "stress," as defined in the *Workers' Compensation Act*
- procedural matters and practice issues

A panel decision dealt with interest on delayed benefit awards and the availability of payment for legal costs. Prior to the panel's decision, a referral was made to the Chair of the Workers' Compensation Board for consideration by the Board of Directors of the issues in question. The appeal was returned to the Tribunal by the Chair.

The number of active appeals from Tribunal decisions and the number of decisions released by the Courts remained low this year. Thirteen active appeals remained, at year end, with four decisions having been rendered during the year by the Nova Scotia Court of Appeal. The decisions spoke to several areas of

importance to system stakeholders, including shift work maladaption and "disablement"; the appeal rights of workers subject to the *Government Employees Compensation Act*, and determinations as to whether a right of action is barred.

In three of these cases, the Tribunal made submissions to the Court on jurisdictional matters. The Tribunal's views were also represented before the Supreme Court of Canada, in the *Martin* and *Laseur* appeals, on the issue of the Tribunal's jurisdiction to apply the *Canadian Charter of Rights and Freedoms*.

As in the past, we monitored our decisions this year for quality, consistency, and the nature of the issues dealt with. In addition, we tracked our performance on other measures: Decisions were consistently rendered within the 60-day time frame mandated by the Act and, in most cases, were resolved within 30 days, in accordance with Tribunal standards. Decision length was observed, as required by s. 252A of the Act, and few decisions necessitating the correction of a typographical or clerical error were made.

While most appeal indicators remained consistent with the previous year, certain trends emerged in relation to our handling of appeals. We saw, for example, an increase in the number of appeals conducted by way of oral hearing—from 30 to 35 per cent of the total number of decisions, over the course of the year. This may be due to an increase in the complexity of appeals. It may also result from the expectation that new evidence will be provided in many cases, and that the evidence can best be addressed in an oral hearing. There was a 4 per cent increase in the number of appeals for which adjournments or postponements of oral hearings, or extensions of submission and evidence deadlines, were sought. This also seems to be the result of new evidence being tendered in a growing number of appeals.

The provision of new evidence on appeal may also account, in part, for an increase in the number of appeals resolved by way of referral to the Hearing Officer. Last year, there were approximately 30 such cases—4 per cent of all decisions; this year, there were 81, or approximately 10 per cent. As of year end, 51 decisions had been rendered by the Hearing Officer in response to these referrals, and approximately half of the referrals were either allowed, in whole or in part, or were referred to other Board decision-makers or medical staff, for further consideration.

Fiscally, the Tribunal was within its revised forecast in all budget categories this year. However, we exceeded our original authority by approximately $12,000, due to unanticipated salary expenditures in relation to merit pay increases that were made available to management professionals throughout government.

Overall, expenditures exceeded those of the previous year by $238,318—a 17 per cent increase. The increases enabled WCAT to plan for its Case Management Review project, and for the legal costs associated with our representation before the Supreme Court of Canada in *Martin and Laseur v. Workers' Compensation Board (N.S.) et al.*

Structurally, the Tribunal saw a reorganization of its management framework in a trial project that began in December. We moved from a management to a topical focus in our team approach. Appeal Commissioners have formed three groups, whose focus is the review of Tribunal decisions in one of three broad subject areas—permanent medical impairment and chronic pain; earnings replacement benefits; and occupational disease. The groups are lead by a rotating chair and reports on noteworthy decisions are provided to all Commissioners at monthly meetings convened primarily for this purpose. Performance review is now conducted by the Chief Appeal Commissioner. The new model replaces a hierarchical management structure with a more centralized one, and promotes the development of subject-matter expertise by Appeal Commissioners.

Other specific initiatives undertaken or completed in the year, include

- pamphlet for appeal participants, "If You Wish to Appeal" (released in October)
- Code of Conduct for Appeal Commissioners (completed in draft)
- Performance Measures for the Tribunal (completed in draft)
- Practice Directions completed, subject to stakeholder feedback, in a number of areas, including determination of mode of hearing; notification by employers of their intention to participate in appeals; employer access to claim file documents; issuance of summons' to witnesses and orders for production; revised decision length guideline for Commissioners (completed)
- contract discussions for access to electronic decision-database service (continued)
- compendia canvassing significant Tribunal and court decisions (completed)
- pilot project for testing the Board's Electronic Claim File (initiated in February)
- staff training in a number of areas, provided by WCB

In addition to these specific initiatives, the Tribunal engaged in two significant strategic planning efforts this year, and began an operational review of its appeal functions, which promises to improve service delivery to workers and employers. These initiatives were, in some respects, inspired by the statutory review conducted by the Workers' Compensation Review Committee, which concluded its work just as the new year began.

With the Committee's report in hand, WCAT embarked on the journey of strategic planning for the Tribunal in early June. As a result of intensive work on the part of Commissioners and staff, we emerged from the planning process with a draft vision, mission, values, and goals for the Tribunal. Broad areas of focus were identified for the coming year, including

- the delivery of high quality service to appeal participants, in resolving appeals
- effective communication with those who have an interest in the Tribunal's work
- team building and cooperation to create a fair and healthy work environment

Having begun the strategic planning process, we then pursued the most pressing of our priorities. The need for operational improvements to WCAT's appeal management process and the creation of a database for managing appeals and tracking data were clearly seen as areas for immediate attention. The desire to make better use of staff resources and to offer prompt service tailored to the needs of individual appeals was a driving factor. In addition, we were motivated to find better, more efficient ways of tracking issues and trends in appeals for purposes of monitoring our performance.

In preparation for this project, and as part of our planning focus for the year, we investigated the systems and resources used by other agencies in several areas of significance to the Tribunal's work. In October, we visited the Appeals Tribunal of the Workplace Health, Safety and Compensation Commission of New Brunswick, to review their case management system. Also in the fall, our own WCB offered presentations to WCAT staff and me on the Board's Data Warehouse System; its Performance Management and Measurement System; staff development and training opportunities; and the Board's Performance Excellence Program. We also had an opportunity to discuss with Board staff, the development of an electronic appeal tracking system for WCAT.

In January we acquired the services of a project management consultant and, in February, we launched our Case Management Review project, aided by a team of Appeal Commissioners and staff. The project provided an opportunity to prepare a research paper on alternative dispute resolution and to conduct

interviews with staff of appeal tribunals across the country concerning appeal management systems and Registrar activity.

During the brief period of the project's existence we have been able to more fully identify specific areas for change, and to implement some initial measures that will assist us in improving operations and, ultimately, the services we offer. Database design and development remain for phase two of the project, which we expect to begin in the coming months. In pursuing this phase, we hope to make use of existing technology in the form of WCB's Electronic Claim File, as well as the WCB systems for statistical data storage and tracking.

The Case Management Review project represents an opportunity to work closely with our system partners to develop a more efficient system for appeal management; one that is fully integrated with the technology currently used by WCB.

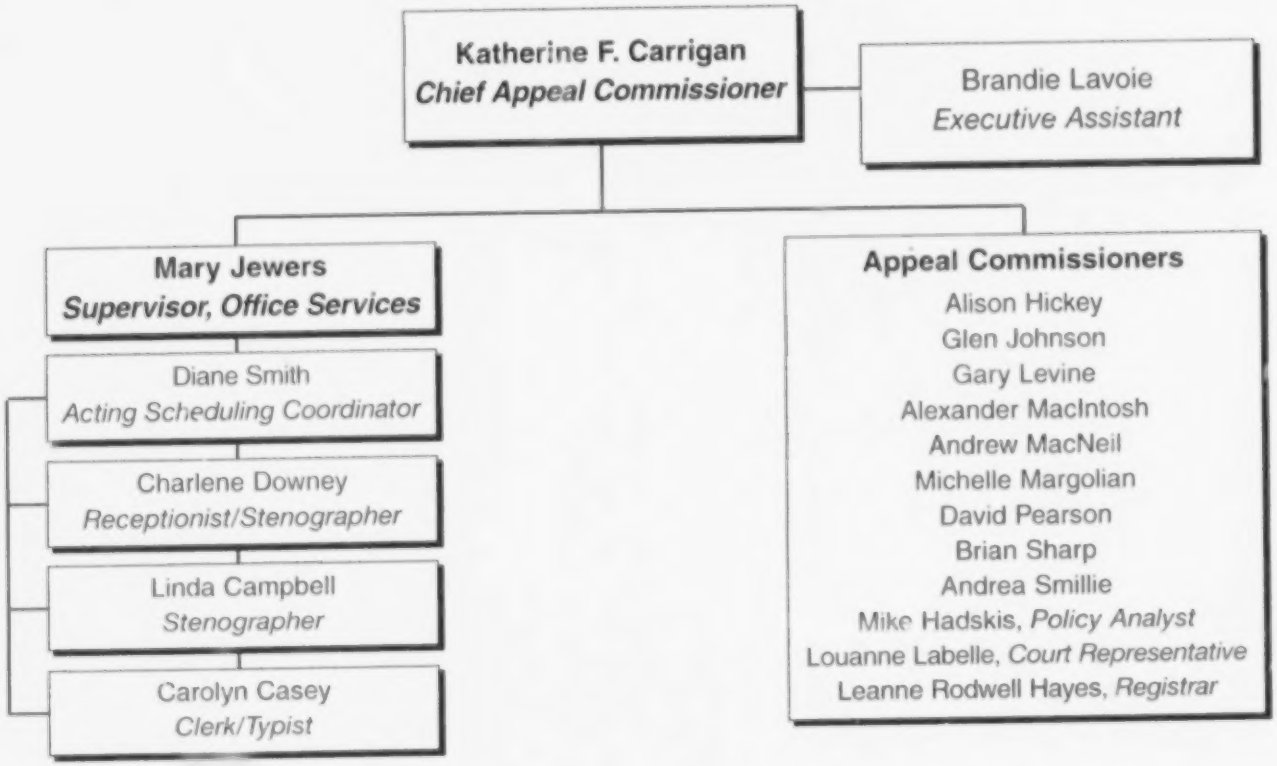
In parallel with the important work of strategic planning and operational improvements, the Tribunal embarked on a significant cooperative venture with its agency partners and system stakeholders—the creation of a strategic plan for the Workplace Safety and Insurance System.

This process marked a departure from the past in several ways. It represented one of the first opportunities for all agency heads to assemble and discuss high-level issues affecting the future of workers' compensation in Nova Scotia. It also engaged our members in inter-agency committees which worked cooperatively to carry out the detailed planning work necessary to effect change. Most importantly, it facilitated discussion between the agencies and our stakeholders—injured workers and employers, and the groups that represent them. WCAT's involvement in this dialogue took place at a Roundtable meeting in December, where I had the opportunity to listen, firsthand, to the concerns of injured workers and employers about the appeal process and the health of the workers' compensation system, as a whole.

The unique challenges of the past year—WCAT strategic planning, Workplace Safety and Insurance System strategic planning and Case Management Review—represent the beginning of a fuller, more cooperative relationship with our partner agencies, with each other at WCAT and, ultimately, with the workers and employers we are here to serve. I look forward to our continuing this process in the coming year, while maintaining a high level of service to appeal participants.

Katherine Carrigan
Chief Appeal Commissioner

WORKERS' COMPENSATION APPEALS TRIBUNAL
ORGANIZATIONAL CHART, AS OF DECEMBER 2002



Workers' Compensation Review

WORKERS' COMPENSATION REVIEW COMMITTEE

The Tribunal received the final report of the Workers' Compensation Review Committee—*The Nova Scotia Workers' Compensation Program: A Focused Review*—in early April, following its release to government on March 31, 2002. The Report represented the culmination of a year of significant activity on the part of WCAT members and staff who responded to information requests from the Committee and prepared submissions for the Committee's consideration.

The Review Committee provided direction to the Tribunal in a number of areas, the most important of which was the need for cooperation and communication between the agencies which form the workers' compensation system.

Overall, the Committee expressed the view that WCAT was functioning well, but that it should develop specific agency performance measures and should report publicly on its compliance with the statute.

"The appeal system has improved demonstrably in recent years. The appeal backlog that propelled review in 1998 by the Auditor General and an all-party select committee has been addressed. No new backlog is accumulating. There is widespread support for the impartiality and service provided by the Workers' Compensation Appeals Tribunal".

- Workers' Compensation Review Committee Final Report, p. 193

A number of WCAT recommendations were made by the Committee in response to specific Review Topics contained in the Committee's Terms of Reference.

The following is a summary of some of the Committee's more important findings and recommendations that relate, either specifically or generally, to WCAT:

Internal and External Levels of Appeal

The Review Committee found that the external level of appeal ensures an independent review, and that there is a high degree of consistency in decision-making within each level of appeal. The rate at which appeals are allowed or denied is not exceptional, and the cost of internal and external appeals is not inconsistent with the professional qualifications of the decision-makers and administrators. In short, "The internal and external appeal systems are both necessary and working well."

The Review Committee did indicate that the community of appeal decision-makers and the entire program could benefit from appeal decision-makers with more varied, practical, and diverse experience, and that the process could benefit from more proactive case management and alternative dispute resolution by appeal decision-makers.

Employer Access to Documents and Records

WCAT should have the express [statutory] authority to provide workers and employers with a copy of any document or record relevant to an appeal that it receives after an appeal has commenced. There should be a legislated limitation of the further disclosure or use of the documents by the employer beyond the appeal proceedings, including any proceedings before the court of appeal.

Time Limits for Submitting Evidence to WCAT

WCAT has a common law and statutory duty to accept late-submitted evidence until it has rendered its decision. [WCAT's] process and the time within which its makes its decisions, in effect, set the time limit on the presentation of any additional evidence. The power to refer a matter to a hearing officer allows WCAT to adhere to its statutory time limits and presents a possible deterrent to deliberate delay.

The Review Committee concluded that there should be no statutory time limits. This is the last level at which new evidence is to be considered and WCAT has the responsibility to manage its process, including referrals to hearing officers, in a manner that is both efficient and fair.

WCAT Power to Remit Matters or Give Directions to WCB

WCAT's jurisdiction should not be expanded to allow it to remit back to the Board, generally, or to give directions to the Board or the Hearing Officer in the context of a referral.

WCAT Power to Correct Errors and Reconsider Decisions

At its discretion and with the consent of all parties, WCAT should have authority, under s.252(3), to correct errors of jurisdiction, breaches of the rules of natural justice, and breaches of the duty of fairness through rescinding and reconsidering a decision.

Administrative Costs

Without elaboration, the Review Committee stated that WCAT's ratio of administrative costs to the value of claims paid does not compare favourably WCAT's Canadian counterpart(s).

Accountability Frameworks, Strategic Planning, and Performance Measures

In addition to the Review Committee's comments and recommendations specific to WCAT, it focused on the system as a whole—its governance and accountability structure, strategic planning, and the development of performance measures.

Overall coordination of the health and safety and workers' compensation system components was considered essential by the Committee. It recommended an amendment to the *Workers' Compensation Act* to reconstitute the Board of Directors of the Workers' Compensation Board to have, in addition to its current responsibilities, governing oversight of the Occupational Health and Safety Division, Workers' Advisers Program, and Workers Compensation Appeals Tribunal.

"There is a pressing need to define common goals, to create integrated lines of accountability and communication and to set program, not just agency measures of performance. This committee has not had the time or mandate to pursue each. However, it is a task that must be done without delay and with broader public debate."

- Workers' Compensation Review Committee Final Report, p. 217

The development, within one year, of a system-wide strategic plan, establishing broad program objectives, was also recommended, along with the public reporting by each agency of its monitoring for compliance with the Act and Regulations. The Committee identified a number of performance measures it considered appropriate for determining how well the three agencies (WCB, WCAT, and WAP) were meeting their statutory mandates. WCAT is currently working to refine and implement these agency measures.

GOVERNMENT'S RESPONSE TO THE REPORT OF THE REVIEW COMMITTEE

In July, the government issued its response to the Report of the Review Committee. Government identified two major themes for consideration in its Response Plan:

- the need for improved corporate governance and best practices
- the need for strategic planning for the health and safety and compensation program and the need to involve stakeholders in planning and policy creation

Government commented on the system's governance structure, stating that the Chief Appeal Commissioner should not be made a non-voting member of the WCB's Board of Directors, as had been recommended by the Review Committee. To do so, it said, would raise issues of institutional independence. However, WCAT, along with the Workers' Advisers Program and the Occupational Health and Safety Compliance and Enforcement Division of the Department of Environment and Labour, were to provide reports to the WCB Board of Directors on a quarterly basis in order to update the Board and receive feedback on issues and results. The Prevention and Education unit of Occupational Health and Safety was to be moved to the WCB in order to ensure the Board's complete governing oversight on issues of prevention and education.

The government tasked a new Chair of the Workers' Compensation Board with facilitation of the strategic planning process, involving all three agencies and the Occupational Health and Division. In addition, the Chair was to consider consultation mechanisms for strategic planning and the development of policies. Key performance standards and measures for the system were to be created through the strategic planning process, and benefits and system improvements were also to be dealt with.

Workplace Safety and Insurance System Strategic Planning

Initial strategic planning discussions for the Workplace Safety and Insurance System began in late August. At that time, a meeting was held between the agency heads and the Workers' Compensation Board Chair.

The planning process began in earnest in September, with the development of a Terms of Reference for the "Coordinating Committee"—the agency heads who would have final agency approval of the draft strategic plan. A planning framework, including time lines, was also identified.

A formal structure for the development, refinement, and review of the draft plan was created: The Coordinating Committee would review and approve the draft plan, while an Expanded Coordinating Committee, consisting of members and staff of the respective agencies, in addition to the Coordinating Committee members, would make recommendations. The detailed draft plan components—objectives and specific strategies for effecting the system's goals—were to be developed, in the first instance, by multi-agency teams of members and staff. Their work, in turn, would be reviewed by the Expanded Coordinating and Coordinating Committees.

An initial workshop, held in September, produced a draft vision, mission, and strategic goals for the system. This important first step engaged both the agency heads as well as staff. On behalf of WCAT, Appeal Commissioners Sandy MacIntosh and Andrew MacNeil participated, along with the Chief Appeal Commissioner.

System stakeholders had an opportunity to consider the draft vision, mission, and goals for the system at a "roundtable" meeting on December 5. This day-long session, attended by the Chief Appeal Commissioner, produced recommendations for change that became incorporated into the planning process.

As a result of the roundtable feedback, the system's vision, mission, and goals were finalized and the work of developing specific objectives and strategies begun. Several planning teams were formed for this purpose, dealing with key areas for development: claims and appeal issues resolution; system agency and stakeholder information sharing and access; accident prevention; return to work; system performance measures; and stakeholder consultation. WCAT Appeal Commissioners participated in all but the "prevention" and "return to work" teams.

"The strategic planning process has enabled the Tribunal to forge ties with its partner agencies which will continue into the future. It represents the beginning of an era of increased involvement and cooperation with our workplace safety and insurance system partners. I look forward to being a part of this."

- Katherine Carrigan, Chief Appeal Commissioner

The members and staff of the Tribunal who were not involved in the system's strategic planning exercise had an opportunity to consider both the process and the detailed components of the draft plan through presentations from Workers' Compensation Board Policy Analyst Wendy Griffin in February and March.

By year end, the work of the agencies in developing specific objectives and strategies was nearing completion. We look forward to the next milestone in the planning process—Roundtable Two, slated for late May 2003—when stakeholders will have the opportunity to review and comment on the detailed draft plan.

The anticipated release of the system plan, in June 2003, will mark the culmination of approximately ten months of intensive effort put forward by stakeholders and agencies, including WCAT members and staff. We expect the results of this effort to benefit workers and employers both directly and indirectly, through enhancements to the system which serves them.

WCAT Strategic Planning

WCAT began the process of strategic planning in June 2002, with a two-day session attended by all members and staff, facilitated by a Human Resources consultant from the Department of Justice. At the conclusion of the facilitated sessions, we had developed a draft mission, vision, values, and goals, as well as some specific strategies for immediate implementation. The process resumed in late October, when a day-long session was held for purposes of completing the work we had begun in June. This session, also facilitated by a Human Resources consultant, and attended by both Commissioners and staff, focused on the development of specific objectives particular to the Tribunal's identified goals.

Prior to the October planning session, a working group, lead by Appeal Commissioner Andrew MacNeil, and consisting of two other Commissioners, two staff persons, and the Chief Appeal Commissioner, was created for purposes of organizing the broad goals and specific objectives developed in the initial planning sessions.

Following the October meeting, the working group met regularly to further the planning process by creating specific strategies under the various goals and objectives, and setting times lines for completion of the particular initiatives which had been identified. This work continued into 2003.

In January, the draft mission, vision, values, and goals were reviewed by Communications Nova Scotia and by the Director of Communications for the Department of Justice. Some revisions were made following these consultations, and the draft plan was again put before the Tribunal, in February.

By year-end, further refinement of our strategic plan was achieved in consultation with Dennita Fitzpatrick, a project management consultant with CGI Information Systems and Management Consultants, Inc. Ms. Fitzpatrick was hired by the Tribunal to assist us with a review of our appeal management systems. She also aided us in aligning the Tribunal's strategic plan with our draft performance measures.

It is anticipated that a further meeting of the working group will be convened early in the new year, with a review of the strategic and business plan by the entire Tribunal soon afterward. We are hopeful that the plan will be adopted by the Tribunal, and our vision, mission, and values made available to stakeholders and others in the near future.

Completion of the initial strategic planning process supports the work done at the level of the workplace safety and insurance system. We expect the Tribunal's plan to complement the draft strategic plan developed with our system partners. The process of working together as a Tribunal in the creation of a uniquely WCAT plan has been a valuable experience. It has enabled the Tribunal to create an identity, and to share ideas about ways in which we can enhance the provision of services to appeal participants and others with whom we interact. It has also promoted communication amongst Commissioners and staff about internal matters, including practices and procedures, from which we can all benefit.

"Historically, particularly during the backlog period, the Tribunal has had to respond in the immediate short term to varying external stresses. With the development of our first strategic plan this past year, we have taken the opportunity to review and re-shape our internal functions coherently with a view to the longer term, rationalizing our operations to better serve injured workers and employers, and our system partners."

- Andrew MacNeil, Appeal Commissioner

In addition to the work done on the development of a strategic and business plan for WCAT, draft performance measures for the Tribunal have been created and reviewed by a team of Commissioners and staff working on WCAT's case management systems. The performance measures take into account the statutory requirements imposed on WCAT by the *Workers' Compensation Act*, as well as the measures typically tracked by agencies such as WCAT, including staff and stakeholder satisfaction. As with WCAT's strategic plan, we are hopeful that further refinement to the draft performance measures will take place in the near future, and anticipate their completion and adoption in the first quarter of 2003.

In furtherance both of case management review and the development of agency performance measures, WCAT has developed a stakeholder satisfaction survey which we hope to conduct with workers who have had appeals before the Tribunal in the recent past. The survey should provide baseline information to enable us to continue to improve the level of service offered to appeal participants. We hope to conduct the survey in the first quarter of 2003, and to repeat the process semi-annually thereafter, as a means of assessing our service performance.

Developments in the Law

CHRONIC PAIN

Tribunal decisions in the area of chronic pain, while limited in number this year, continued to reflect the significant advances in the law seen in the previous year.

In Decision 2002-106-AD (June 24, 2002) an Appeal Commissioner held that the definition of chronic pain in s. 10A of the Act leads to three categories of pain which may follow an injury:

- pain explained by significant, objective findings at the site of the injury which indicate that the injury has not healed;
- pain which, although not explained by objective findings, does not persist beyond the normal recovery time and is not disproportionate to the injury; and
- pain which continues beyond normal recovery time or is disproportionate to the injury, and is not explained by significant objective physical findings.

The Commissioner found that pain which falls within the third category is "chronic pain," as defined in the Act, and is compensated in accordance with s. 10B of the Act. Pain within the first two categories is compensable under the general scheme of the Act.

Decision 2002-106-AD is also noteworthy for its statements concerning the sufficiency of the evidence needed to make a finding of chronic pain. The Commissioner stated that the more serious the consequences of a particular finding, the clearer and more cogent must be the evidence in support of it, noting that a finding of chronic pain can severely limit eligibility for benefits under the Act.

Decision 2002-219-AD (August 16, 2002) applied Decision 2001-83-AD-CA (December 31, 2001), in finding that while the Worker had chronic pain, he was entitled to TERB until the date chronic pain was found to exist.

An appeal was referred back to a Hearing Officer in Decision 2002-516-RTH (November 22, 2002), where a medical report filed with the Tribunal after the appeal was initiated suggested that the Worker's psychiatric conversion reaction might be separate from his chronic pain. The Worker's condition appeared to involve both physical and psychological factors. The Appeal Commissioner quoted the Court of Appeal in *Huphman v. Workers' Compensation Board(N.S.) et al.*, (2001), 191 N.S.R. (2d) 384 (C.A.) in deciding that it was appropriate to consider whether the Worker's psychiatric condition involved non-chronic pain aspects.

A non-chronic pain component was found to warrant a PMI of greater than 0 per cent, in Decision 2002-267-AD (August 30, 2002), on the basis of *Huphman*, and the Tribunal's panel decision in Decision 2001-349-AD (December 21, 2001).

Decision 2001-474-AD (April 30, 2002) found that a "chronic daily headache syndrome" was a "like or related condition" to chronic pain or myofascial pain syndrome, as defined in s. 10A of the Act. In Decision 2002-379-AD (September 13, 2002), the Tribunal found that "bronchial hyper reactivity," "fibromyalgia," and "reactive anxiety" in relation to environmental illness also satisfied the definition of chronic pain. The worker in that appeal also met the criteria for entitlement to s. 10E benefits, despite the fact that causation had not been proved. *Martin v. Workers' Compensation Board (N.S.) et al.*, 2000 NSCA 126, was cited in support of the proposition that a causal link was unnecessary in matters of chronic pain.

One of the pre-conditions to entitlement to chronic pain benefits for workers injured during the "window period" (March 23, 1990, to February 1, 1996) was considered in Decision 2002-571-AD (December 23, 2002). The Appeal Commissioner held that the phrase, "Where a worker as of November 25, 1998, had a claim under appeal...", in s. 10E(d) of the Act, extended to appeals initiated by the employer, as well as by the worker. To hold otherwise would mean that an employer could preclude an award of s. 10E benefits simply by appealing a Board decision prior to November 25, 1998. The Tribunal's decision is presently under appeal to the Nova Scotia Court of Appeal.

In *Decision 2002-122-AD* (June 20, 2002), Policy 2.4.4 was found to impliedly oust any general discretionary authority in s. 190 to extend a deadline. The Policy makes it clear that workers are ineligible for benefits under Phase II of the Functional Restoration Program if 12 months have elapsed since the date of injury.

PERMANENT IMPAIRMENT

Decision 99-513-AD-CA (May 21, 2002) found that "permanent impairment," under s. 34, and "permanent medical impairment," under the permanent medical impairment (PMI) Guidelines, are synonymous. Where the Tribunal finds that a worker has a permanent impairment and is therefore no longer entitled to temporary earnings replacement benefits (TERB), the Board must award a PMI rating of greater than zero per cent. In determining whether a Worker has a permanent impairment on an appeal where TERB is sought, consideration should be given to the indicators of permanence in Decision 99-1954-AD and the definition of "impairment" in the Introduction to the PMI Guidelines, as well as any specific PMI Guidelines' provisions applicable to the Worker's injury. The Tribunal has explicitly followed this approach in many subsequent decisions.

A 25 per cent PMI for a psychiatric injury was increased to 55 per cent, in Decision 2002-201-AD (September 27, 2002), based on the medical evidence. In reviewing the American Medical Association (AMA) classifications of impairment in light of Board Policy 3.3.4, the Commissioner noted that the classifications are not precise measures, but are based largely on clinical judgements involving four primary areas of functioning: activities of daily living, social functioning, concentration, and adaptation.

Board Policy 3.3.4, section 9, was referenced in Decision 2001-596-AD (August 13, 2002), noting that the AMA Guides are used to assess impairment, not disability. Contrasting the concepts of "impairment" and "disability," the Commissioner held that compensation could not be awarded on the basis of actual disability rather than PMI evaluated in accordance with a table in the Guides.

COMMUTATION OF PENSION

A request for commutation of a worker's pension in order to pay off a mortgage, where the Worker would otherwise lose his home, was allowed as an "exceptional circumstance" under clause 12 of Policy 3.7.2R, in Decision 2002-107-AD (May 29, 2002). A similar result was reached in Decision 2002-161-AD (July 23, 2002), where the Tribunal awarded a 50 per cent pension commutation to a 70 year old worker for purposes of debt retirement (outstanding car loan and residential mortgage) and improvements to the worker's residence. Board Policy 3.7.2R, which provides that an "approved purpose" for commutation is, in general, one that is calculated to strongly enhance the worker's vocational rehabilitation was inapplicable here, given that the Worker would not be returning to the workforce both because of his age and his PMI.

By contrast, in Decision 2002-128-AD (July 25, 2002), the Worker's request for commutation of her pension in order to provide start-up costs for a convenience store which she would own and operate, was denied. While noting that the purpose of the proposal met the requirements for enhancement of vocational rehabilitation, the Commissioner found that the Board "occupied a position of trust with respect to the Worker's benefits and properly required the preparation of an objective and realistic business plan in support of the Worker's proposal."

The Board's commutation formula was upheld in Decision 2002-303-AD (February 6, 2003), in the absence of specific evidence to challenge it.

SUPPLEMENTARY BENEFITS

A long procedural history in Decision 2001-317-AD (April 30, 2002) delayed the Worker's Application for Supplementary Benefits beyond the time frame permitted by Regulation 195-2000 and section 227(4). The payment of retroactive benefits was found to be limited to one year from the coming into force of section 227. It was concluded that the Board could use s.190 to extend the deadline and allow the retroactive claim for benefits to February 1, 1996.

In Decision 2001-862-AD (April 15, 2002), a Worker's de-registered RRSP income was properly included as "total income" when calculating Supplementary Benefits. The Board had determined entitlement to supplementary benefits based on the Worker's 2001 income tax return, reflecting earnings from a well-paying, Board-sponsored job as part of vocational rehabilitation.

The Tribunal, in Decision 2002-343-AD (August 15, 2002), found that the Worker's income had dropped significantly between February and September 2002; therefore, the "real merits and justice of the case" required the Board to base eligibility on actual 2002 income, not historic 2000 income.

EARNINGS REPLACEMENT BENEFITS

An "award" of extended earnings replacement benefits (EERB) under s. 73(1)(a) occurs on the date the EERB entitlement decision is made, rather than 36 months after the effective date of the initial award or the date the Worker stopped working: Decision 2002-60-AD (July 15, 2002).

In Decision 2002-367-AD (September 30, 2002), the Board's finding that a particular occupation was "suitable and reasonably available" was found to be reviewable, under s. 73(1)(a), as the Act and policies do not limit the scope of a 36-month EERB review. A service station attendant was not suitable where the Worker had not worked in 11 years, was in his sixties, and was essentially illiterate.

"The Tribunal has developed an impressive and comprehensive corpus of jurisprudence throughout the course of its existence. It is now seldom necessary to look to outside authorities to aid in resolving matters, as guidance can be found in the body of work generated by the Tribunal and, in some instances, the Court of Appeal. This accumulated expertise and "institutional memory" facilitates the expeditious and predictable resolution of matters before the Tribunal."

- Glen Johnson, Appeal Commissioner

PRACTICE AND PROCEDURE BEFORE THE TRIBUNAL

access by Employer to medical records: The Worker had requested restrictions on the disclosure of two psychiatric medical reports to the Employer. The Tribunal's Registrar, in Decision 2001-873-PAD (September 25, 2002), placed restrictions on access to this information, having found that the Worker met the burden of bringing evidence of harm likely to result from the disclosure. The restrictions were intended to be only those necessary to address the Worker's concerns and to impact as little as possible the Employer's ability to conduct its case. They consisted of not leaving copies of the reports with lay witnesses and editing the documents to ensure that only information within the intended scope of testimony remained.

issuance of summonses: The Tribunal's Registrar, in Decision 98-123-AD-CA-PAD (July 11, 2002), denied the issuance of summonses, under s. 178(1) of the Act, to compel the attendance for purposes of providing testimony at the hearing, of a Board Medical Advisor and a Board Vocational Rehabilitation Counsellor. The summonses were not "relevant and essential to the appeal," considering the following factors:

- the nature of the evidence that could be obtained from the witness
- the function exercised by the employee
- whether that function was adjudicative
- the necessity of the evidence, given the issue in the case
- the availability of other evidence, including the WCB file

person with a "direct and immediate interest": In Decision 2001-873-PAD (September 25, 2002), the Tribunal's Registrar found that the Review Officer under the *Freedom of Information and Protection of Privacy Act*, was not an appeal "participant," as per s. 245 of the Act, in that he was not a person with a

"direct and immediate interest" in a preliminary matter concerning the right of access of the Employer to the Worker's medical information. Consequently, written comments provided by the Review Officer would not be considered.

In Decision 2001-873-PAD-2 (February 20, 2003), the Tribunal's Registrar issued a preliminary decision finding a union to be a person with a "direct and immediate interest" in the matter under appeal; the union was therefore entitled to be a participant in the proceeding. The union had successfully argued that its "reputation interest" could be harmed in the course of determining whether the Worker had suffered a personal injury in the form of stress due to conflicts within the workplace. Some of the allegations involved the union and its members.

RECONSIDERATION OF FINAL DECISIONS OF THE BOARD

In Decision 2002-77-AD (June 14, 2002) the Appeal Commissioner found that a final EERB decision could be reconsidered under s. 185(2) and Board Policy 8.1.7R1, despite the fact that s. 185(2) is expressly made "subject to Sections 71 to 73." Section 73 permits the Board to "review and adjust" its determination of the amount of compensation payable to a worker as an EERB. The Commissioner held that "reconsideration" (of final decisions) and "review" serve different functions, and the types of evidence which satisfy the respective provisions can differ. On the merits, the Worker did not meet the requirements of an EERB review nor did he present new evidence satisfying the criteria under s.185(2) and Policy 8.1.7R1 for reconsideration of the decision.

The distinction between "review" and "reconsideration" was also considered in Decision 2002-605-AD (November 29, 2002), in the context of PMI. There, the Appeal Commissioner accepted the reasoning in Decision 2002-77-AD and stated:

"A reconsideration relates back to a final decision when new evidence has been brought forward which may place the final decision in doubt. If there has not been a final decision, it cannot be reconsidered. A review does not necessarily call into question any previous or final decisions. Previous decisions may have been correctly decided at the time they were rendered, however, over time, circumstances have changed making it appropriate to review the claim. The issue in this case is one of review rather than reconsideration."

- Decision 2002-605-AD, at p. 3

DETERMINATIONS AS TO WHETHER RIGHT OF ACTION IS BARRED

Two decisions were rendered this year under the Tribunal's jurisdiction per s. 29 of the Act, to determine whether a right of action of a worker, the worker's dependant, or the worker's employer, is barred by the *Workers' Compensation Act*. The Act, in s. 28, indicates that the rights to compensation which it provides are in lieu of rights of action for compensation.

In Decision 2001-808-TPA (May 31, 2002), the Tribunal concluded that the exception to the general bar to action in s. 28(2), pertaining to the "use or operation of a motor vehicle...," did not arise where the worker had alleged negligence by an employee of a third party. The Worker sustained injuries when a barrel dropped while being unloaded from a vehicle belonging to the third party employer. A Tribunal panel in Decision 2001-458-TPA and 2001-435-TPA (March 25, 2002), was followed in reaching this outcome.

Decision 2003-145-TPA-1 (March 11, 2003), found that the right of action of the wife and children of a deceased worker who was fatally injured in a work-related accident, was barred because the wife and children were "dependants" of the worker, as that term is defined in s. 2(l) of the Act. As dependants, they were specifically included within the statutory bar.

OTHER DECISIONS OF NOTE

overpayment of benefits: The consequences of an overpayment of TERB were considered in the context of accrued CPP disability benefits, in Decision 2002-727-AD (March 17, 2003). A similar fact situation, involving an overpayment of EERB, was considered in Decision 2002-387-AD (September 17, 2002). Decision 2002-727-AD found that section 38 of the Act requires the deduction of 50 per cent of Canada Pension Plan (CPP) periodic benefits, and section 72 permits temporary benefits to be reviewed at any time. Decision 2002-387-AD, on the other hand, noted that an EERB award is final, subject to the specific circumstances for review, set out in s. 73(1). There was no basis for a review and adjustment of EERB prior to 36 months from the date of the award, despite the receipt of CPP disability benefits which might otherwise be deducted.

medical marijuana: The Tribunal found that marijuana, prescribed by a general medical practitioner for relief of compensable back pain, was not a "generally accepted practice within the health care community," as required by Board Policy 2.3.1. Although not a basis for the decision, it was noted that the Worker did not have a licence to possess marijuana, under the Marihuana Medical Access Regulations made in accordance with the federal *Controlled Drugs and Substances Act*.

attendant allowance: In Decision 2001-901-AD (April 30, 2002), it was concluded that the deceased worker's estate was entitled to the cost of an attendant allowance which should have been provided to the deceased worker. The allowance must minimally reflect the current minimum wage, and it was unapportionable, as "medical aid," in accordance with Board Policy 3.9.11.

interest on delayed payment of benefits: A panel, in Decision 2001-794-AD (January 31, 2003), found that the Board's legislative authority to pay "compensation" implied a discretion to award interest in certain cases. There was a twelve-year delay in the payment of benefits to the worker and to his dependents after his death. This, along with the financial burden sustained by the family as a result of being deprived of the benefits in question, justified an award of interest. The panel's decision has been appealed and is expected to be heard on its merits in the fall of 2003.

Prior to the paper review hearing conducted by the panel, an Appeal Commissioner of the Tribunal referred the appeal to the Deputy Chair of the Workers' Compensation Board, on June 19, 2002, under s. 247(1) of the Act, for consideration by the Board of Directors on the grounds that the appeal "raises an issue of law and general policy." The Deputy Chair, in correspondence to the Tribunal of July 17, 2002, returned the appeal to the Tribunal, under s. 247(2)(b).

availability of legal costs: Following a detailed consideration of this issue, the panel, in Decision 2001-794-AD (January 31, 2003), held that payment of legal costs was not available to workers under the Act. An Appeal Commissioner, on June 19, 2002, had referred the issue (along with the interest issue), to the Deputy Chair of the Board for consideration by the Board of Directors. The matter was returned to the Tribunal by the Chair, on July 17, 2002.

application of the former Act: The former *Workers' Compensation Act* definition of "accident" was found to be applicable in Decision 2002-197-AD (October 28, 2002), where the Worker's injury, in the form of work-related "stress," occurred when the former Act was in force. The Tribunal found that the former Act created a vested right to compensation which was removed under the new Act when a definition of stress was introduced. The Commissioner reasoned that since the former Act would be determinative of the statutory bar to suit it was, similarly, applicable in determining whether a claim for benefits may be recognized in accordance with the broader, former Act definition of accident. The Tribunal's decision was appealed to the Court of Appeal and was to be heard on its merits in April 2003.

finality of Tribunal decisions: In Decision 99-513-AD-CA (May 21, 2002), the Tribunal found that it was bound by the "material elements" of its final decisions where the findings have not been appealed and there is no "new evidence."

employer assessment issues: No "real and substantial connection" was found between a company and its successor, in Decision 2001-950-AD (May 13, 2002); consequently, assessment costs were held not be attributed to the successor company.

In Decision 2002-491-AD (December 23, 2002), the Tribunal found that a firm was liable for the outstanding balance on its assessment account with the Board, where the firm ought to have known that coverage was optional.

survivor benefits: On a remittance back from the Court of Appeal, in Decision 97-1030-TAD-CA (June 28, 2002) the Tribunal applied the reasoning of the Court of Appeal in *Bauman et al. v. Nova Scotia (Attorney General) et al.* (2001), 192 N.S.R. (2d) 236 (C.A.), and allowed reinstatement of survivor benefits from January 1, 1999, forward, as provided for in "Bill 90." In a previous decision in the same matter the Tribunal had applied the Supreme Court's ruling in *Bauman* (overturned by the Court of Appeal), and reinstated survivor benefits to April 17, 1985.

time limitation for filing claim: In Decision 2002-37-AD (April 30, 2002), a doctor's report was filed with the Board more than 5 years after the Worker learned that he had a work-related condition. The claim was found to be statute barred, on the application of s.83 and *Meechan v. Workers' Compensation Board (N.S.) et al.*, 2001 NSCA 124 (September 11, 2001). *Meechan* held that the filing of a medical report with the Board within the five year period under the Act may be sufficient notice to the Board of a request for compensation.

"in the course of employment": In Decision 2002-371-AD (October 24, 2002), an employer sought to overturn the Board's finding that the Worker's injury occurred in the course of employment and was therefore compensable. The Worker had torn his Achilles tendon while participating in a ball tournament which raised funds for an annual "client appreciation day." The Commissioner found that there was a sufficient connection to the employment for the injury to considered compensable, noting that the funds raised went to an account maintained by employees; without funds from the tournament other means of arranging the client appreciation event would have been necessary; some paid time-off was given to workers to promote participation; the event was solely for the Employer's benefit; it was incidental to the Employer's business, and, but for his employment, the Worker would not have participated.

occupational disease: Decision 2001-782-AD (April 29, 2002) found that in calculating "20 years at the face of a mine," for purposes of the "automatic assumption" clause in s. 35 of the Act, sick leave time should be included as working time. Extended periods of layoff and strike should not be included.

Generic studies dealing with possible links between leukemia and exposure to benzene at steel plants were referenced in Decision 2002-79-AD (August 28, 2002), in recognizing chronic lymphocytic leukemia as resulting from a Worker's exposures while in the course of his 33-year employment at a steel plant.

recurrence of injury: In Decision 2002-414-AD (October 31, 2002), the worker suffered a recurrence of his injury after a PMI. In determining the appropriate rate for an award of TERB, 85 per cent of net earnings should be applied under s. 37(3)(a) of the Act. A plain reading of section 37 required the application of a lower rate for only one twenty-six week period of TERB in relation to a given injury.

An employer's re-employment obligations were considered in the context of recurrence of injury, in Decision 2002-554-AD (December 20, 2002). In that case, s. 90 of the Act was found to create an obligation to offer to re-employ a worker who has been unable to work "as a result of the injury," and has been employed for at least 12 continuous months. This obligation exists irrespective of whether the injury is a recurrence following a return to work of less than 12 months.

stress: Decision 2002-601-AD (February 28, 2003) followed a previous panel decision of the Tribunal—Decision 2000-29-AD (October 2, 2000)—in adopting a two-part test for psychological stress: 1) whether the evidence establishes that the worker sustained a psychological injury and, if so, 2) whether the workplace significantly contributed to the development of the psychological injury. In order to find that the workplace contributed significantly to the development of the Worker's psychological injury, the Commissioner held that the Worker's subjective impressions must also be ones which a reasonable person, in the same circumstances, would consider stressful.

Appeal Management

TRIBUNAL REGISTRAR

The role of Tribunal Registrar has continued to evolve over the past year, as has the management of appeals in general. The Registrar remains a central part of the Tribunal's appeal intake, and assignment and scheduling processes. In addition, the Registrar manages the adjournment and postponement of oral hearings and the extension of deadlines for receipt of submissions and evidence.

Some changes to the initial processing of appeals include changes to the preliminary classification scheme used to identify the nature of an appeal. In December, the existing classification criteria were expanded from "Chronic Pain," "Environmental Illness," "Assessment," and "Employer appeal from Worker Claim," to include "Earnings Replacement Benefit Issues," "Permanent Medical Impairment," and "Occupational Disease Issues." The addition of these categories enhances the Tribunal's ability to assign appeals to its Appeal Commissioners and to track and review decisions for purposes of quality and consistency.

CASE MANAGEMENT REVIEW

WCAT's Strategic Planning process identified a number of priority issues for the Tribunal's focus. The most significant of these was a broad review of the operational processes by which appeals are managed, particularly during the period from the filing of an appeal to assignment to an Appeal Commissioner for a hearing or decision. We embarked on the process of soliciting a project proposal from a project management consulting firm in December and began Phase I of our "Case Management Review" project in February, with CGI, Inc. and a team of five WCAT Appeal Commissioners and staff.

The goal of Phase I, expected to conclude at the end of May 2003, is twofold: first, to identify areas for appeal management process improvement; second, to identify the Tribunal's electronic database needs for purposes of tracking appeals and appeal statistics.

By year end, the project team had virtually concluded a thorough review of the Tribunal's "current state," that is, the detailed steps involved in managing appeals under our present scheme. Preparations were underway to present this information to the entire Tribunal in mid-April. While gathering information about our internal operations, we had the opportunity to interview members and staff in Workers' Compensation appeal bodies across the country in order to determine the kinds of processes, tools, and systems in place in other jurisdictions. This information has proved to be a valuable resource as we begin to design the "future state" of appeal management at WCAT.

In the course of defining our current operations, we also identified a number of "quick hit" opportunities for improvement in the way we deliver service to stakeholders. These opportunities affect the day-to-day functions carried out by our support staff. They are being welcomed by staff for implementation beginning as early as late April 2003.

"I view the Case Management Review process as a proactive move and have found the process analysis to be quite interesting. Adopting a comprehensive case management system supported by newer technologies will ensure the efficiency of daily operations and help alleviate administrative challenges faced in years past."

- Brandie Lavoie, Executive Assistant to the Chief Appeal Commissioner

---

Other process improvements identified through Case Management Review will more directly impact the work of the Tribunal's Registrar. For example, the preparation of file summaries for use in appeal issue tracking, decision review, and appeal assignment, may be facilitated in future by employing the AS/400 database technology to greater advantage.

Appeal scheduling is also anticipated to change as a result of the Tribunal's Case Management Review. Presently, appeals proceed in a group according to the month received. Standardized dates for paper review submissions and evidence, and for the scheduling of oral hearings, are employed. As a result of discussions between the Chief Appeal Commissioner and the Chief Worker Adviser in June 2002, several process improvements were identified that would benefit the ability of the Workers' Advisers Program to schedule hearings and proceed with paper reviews. The most significant of these initiatives is the relaxation of standardized dates for scheduling groups of appeals in accordance with the date of filing of the appeals.

The setting of hearing, evidence, and submission dates according to the readiness of the appeal (as opposed to standardized dates), should enable the Tribunal to better meet the needs of all appeal participants. In addition, we expect a reduction in requests for extension, adjournment, and postponement of appeals as participants become more actively involved in the setting of hearing dates and in the selection of time frames for providing evidence and submissions to the Tribunal.

The needs of self-represented appellants has also been identified in the Case Management Review project as an area of focus. In future, we anticipate having increased contact with self-represented appellants in the early stages of an appeal. This will assist us to better identify appeal issues and the types of evidence appellants need to provide the Tribunal in order to proceed with their appeals.

The "fast-tracking" of appeals that are ready to move forward to a decision as soon as they are filed with the Tribunal is another opportunity for improvement that is being considered as part of the Case Management Review process.

ELECTRONIC FILE PILOT PROJECT

In February, the Tribunal initiated what was to be a three-month pilot project to evaluate the review of claim files and the processing of appeals utilizing the Board's Electronic Claim File system. (The project has since been extended to the end of June). WCAT has, for some time, been processing appeals using paper copies of WCB claim files which were originally opened and maintained in electronic format. The pilot project represents an opportunity for WCAT to explore the Board's electronic claim file technology in order to determine if we can review claim files—which form the bulk of the evidence in an appeal—electronically, rather than in print form.

Developing an increasing reliance on electronic rather than paper files may be of benefit to WCAT in several ways:

- improved review of evidence and decision-making processes
- enhanced appeal intake and pre-hearing processing by utilizing and linking with the Board's technology
- increased speed and efficiency in accessing claim files
- reduced physical space needed to store files
- reduced transportation and copying costs

The project team, lead by Appeal Commissioner Sandy MacIntosh, is working closely with staff of the WCB, under a joint project Charter. In addition to Commissioner MacIntosh, the WCAT team consists of three other Appeal Commissioners (one of whom is the Tribunal Registrar), and two support staff.

Three of the Appeal Commissioners are reviewing claim files exclusively in electronic format, via their desk-top computers, as part of the decision-making phase of an appeal. One of the Commissioners works primarily from her home and is testing the system from the perspective of a remote-user. The Tribunal's Registrar will explore the usage of the Electronic Claim File technology for purposes of our appeal intake and general appeal management functions. Determinations as to mode of hearing, the creation of file summaries, identification of gaps in the evidence, and the setting of submission and evidence deadlines will be conducted using the electronic format rather than paper copies of claim files, where they are available. The Executive Assistant to

the Chief Appeal Commissioner and the Tribunal's Receptionist have also been involved in the review of the technology, in their respective roles.

Periodic meetings have been held between members and staff of the Tribunal, and Board staff responsible for the project. In addition, the Board has provided those involved in the project with larger computer monitors, and has paid for remote-access costs during the life of the pilot project. The pilot project budget is approximately $5650. WCAT will be reimbursed its project costs by WCB, within the budget limits.

By year end, the project team had completed a small number of decisions relying solely on the Board's Electronic File technology. The project team is expected to provide a report to the Chief Appeal Commissioner by mid-July, with results being made available to the WCB and the WAP by the end of that month.

We are hopeful that this opportunity to explore the Board's "E-File" technology will permit the Tribunal to decide on the extent to which it should adopt the technology for decision-making purposes.

Appeal Statistics

In the past year, 927 appeals were filed with the Tribunal—a decrease of approximately 8 per cent over fiscal 2001–02. Appeal volumes have ranged from 58 to 129 per month, with an average of 77 per month, as compared with 84 last year. (See Charts 2A and B.)

As in previous years, the overwhelming number of appeals are those of injured workers: 814 of the 831 decisions rendered in the year—or 98 per cent—resulted from appeals launched by workers or their representatives. Twelve were employer appeals of worker claims, and only 3 were employer assessment appeals. Two decisions were rendered under the Tribunal's jurisdiction to determine whether a right of action is barred by the Act. (See Charts 9A and B.) Workers were represented by the Workers' Advisers Program in 560 appeals (approximately 69 per cent) and by other representatives in another 91 appeals (10 per cent). The remaining 20 per cent of appeals involved self-represented workers. (See Charts 10A and B.)

Of the 1199 individual issues occurring in decisions from worker - initiated appeals this year, 14 issue-based categories were represented. The breakdown of decision-based issues is similar to that of the previous year: The most common issue in decisions was temporary benefits (new or additional), followed closely by permanent impairment (whether as a request for a permanent impairment award or an increase in an existing permanent impairment rating). The temporary benefits issue arose approximately 28 per cent of the time in worker appeals, followed by medical aid at 25 per cent, and permanent impairment at 24 per cent of all issues on appeal. Again this year, only a small percentage of decisions involved chronic pain: 1.25 per cent of the issues in decisions from worker-initiated appeals were classified as involving "chronic pain," compared with 2 per cent, the year before (See Charts 5A and B.) Five issues were related to employer assessment appeals, arising out of six issue-based categories. (See Charts 6A and B.)

Of the 831 appeals that proceeded to a final decision in 2002–03, the majority—51 per cent—were in relation to appeals received in the year. An additional 118 (nearly 13 per cent) of appeals received in the year were withdrawn or dismissed. Appeals are dismissed by the Tribunal when they are not pursued by filing a Notice of Appeal or other documentation to formally initiate the appeal. The average time to process appeals would appear to be consistent with the previous year. Approximately 41 per cent of the appeals received in the year remained for a decision at year-end, as compared with 40 per cent of appeals the previous year (See Charts 4A and B.)

Appeals resolved by oral hearing increased by 5 per cent this year, to 35 per cent, although the actual number of oral hearings decreased slightly, consistent with the decrease in the number of appeals received. The trend toward increasing complexity in appeals, noted last year, appears to be continuing, and may account for the percentage increase in oral hearings. Of decisions rendered in the year, in approximately 54 per cent of the cases where oral hearings had been requested, oral hearings were granted. That figure is consistent with the 46 per cent of oral hearing requests granted in the previous year. (See Charts 8A and B.)

Postponements and adjournments of oral hearings and the extension of deadlines in paper reviews continue to be significant phenomena affecting the Tribunal's monthly workload planning. In the past year, statistics maintained by the Tribunal's Registrar indicate that approximately 24 per cent of appeals filed in a given month did not go forward within the anticipated time frame. These appeals were delayed as a result of requests by the Workers' Adviser or the Worker to adjourn or postpone an oral hearing date or to extend a paper review deadline for submissions and evidence. Last year we estimated that about 20

per cent of appeals were delayed at the request of the Worker or the Adviser. The vast percentage of such requests—92 per cent—are granted by the Registrar. This amounts to about 21 appeals each month. This year is the first in which detailed statistics concerning the number of extensions and postponements/adjournments have been maintained throughout the year.

Finally, we note that the timely resolution of appeals has enabled the Tribunal to continue to keep pace with the volume of new appeals received. The Tribunal remains free of an appeal backlog approximately two and a half years after the legislated deadline to resolve its appeal backlog was met. At year end, there were 398 unresolved appeals, compared with 420 at the end of the previous year (See Chart 4A.) These appeals are considered "work in progress," since they represent appeals that are awaiting one of the following:

- receipt of submissions and evidence from the participants
- the scheduling of an oral hearing date by the participants
- a decision from an Appeal Commissioner, within the 60-day period under the Act
- a determination from the Registrar (made within one month of receipt) as to whether the appeal will proceed by oral hearing or paper review

Appeals and Judicial Review Proceedings from WCAT Decisions

In fiscal 2002, the number of active appeals from WCAT decisions and the number of decisions released by the Court of Appeal remained both fairly constant and relatively low.

There were thirteen non-chronic pain appeals from WCAT decisions. Two of these were initiated by the Workers' Advisers Program, two by the Workers' Compensation Board, two by employers, and two by outside counsel. Five of the appeals were brought by self-represented workers.

Four appeals were dismissed by the Court of Appeal following hearings at the leave stage; of the appeals that proceeded to be heard on merits, three were allowed and one was dismissed. One additional appeal was remitted back to WCAT by consent of all parties. (See Chart 11.) As of March 31, 2003, there were no pending decisions at the Court of Appeal.

At year end, legal proceedings taken from Tribunal decisions applying the Act's chronic pain provisions—one of two large groups of proceedings which had been adjourned by the courts throughout the year—remained in abeyance. The other group of proceedings—those in which the Tribunal applied the *Government Employees' Compensation Act*, R.S.C. 1985, C. G-8 (GECA)—had largely been withdrawn or set down for hearings.

As of March 31, the list of active appeals from Tribunal decisions totaled 17, five of which were GECA matters which had been set down for a hearing. Several of the GECA appeals will be heard by the Court in September or early October 2003, among eight appeals scheduled for hearing at that time.

CHRONIC PAIN

All of the chronic pain decisions rendered by WCAT this year were appealed by the Workers' Advisers Program. The Nova Scotia Court of Appeal has set these matters over to June 23, 2003, pending the decision of the Supreme Court of Canada in *Workers' Compensation Board (N.S.) v. Martin et al.* (2000), 188 N.S.R.(2d) 330 (C.A.) (leave granted June 14, 2001). The issues on appeal in *Martin* include WCAT's jurisdiction to refuse on *Charter* grounds to apply s. 10B of the Act and the *FRP Regulations*. In addition, the Court is expected to rule on whether s. 10B of the Act and the *FRP Regulations* are contrary to s. 15 of the *Canadian Charter of Rights and Freedoms* and, if so, whether they are saved by s. 1 of the *Charter*.

Several preliminary matters in *Martin* occupied the Tribunal's attention, this year. WCAT's Application for Leave to Cross-Appeal, to change its status from that of a Respondent, was denied by the Supreme Court of Canada on April 11, 2002. Subsequently, on July 22, the Tribunal applied to be joined as an Intervener in the proceeding and requested that its factum, filed in March 2002, be accepted as an Intervener factum. The application was allowed on August 8.

The Tribunal appeared at the December 9 hearing before the Supreme Court of Canada as an Intervener and presented oral argument solely on the issue as to its jurisdiction to deal with issues involving the *Charter*.

As of March 31, 2003, 279 chronic pain appeals were before the Court of Appeal. These appeals are expected to be resolved in the next fiscal year, as a decision is expected from the Supreme Court of Canada within six to eight months of the hearing date.

GOVERNMENT EMPLOYEES COMPENSATION ACT

A second group of adjourned proceedings awaited decisions from the Court of Appeal in *Cape Breton Development Corporation v. Harold Burrell, WCB and WCAT* CA 1611056 and *D'Arcy Thomson* (deceased) *v. WCAT, WCB and Cape Breton Development Corporation* CA 169867. These decisions were expected to deal with the interpretation of GECA as it relates to rights of appeal from WCAT decisions in the context of federal government workers. The appellants had asked the Court to reconsider its earlier decision in *Salloum v. The Nova Scotia Workers' Compensation Appeals Tribunal and the Workers' Compensation Board of Nova Scotia*, 2000 NSCA 148 (December 28, 2000), which held that the right of appeal under s. 256(1) of the *Workers' Compensation Act* is an additional right not provided for in GECA. In view of its finding, the Court in *Salloum* had concluded that it did not have jurisdiction to deal with appeals from GECA-based decisions.

The *Burrell* and *Thomson* matters were argued in September 2001 and on May 1, 2002, the Court of Appeal issued a decision in *Thomson v. Workers' Compensation Board* (N.S.), 2002 NSCA 58 in which Justice Cromwell, writing for the Court, found that it was an arguable issue that the Court should reconsider *Salloum*. The Court ordered that an enlarged, five-member panel of the Court would receive submissions on the following issues, together with the merits of the appeal:

- What are the circumstances under which it is appropriate for a Court to depart from its own prior decisions?
- In this appeal, should the Court depart from its own prior decision?
- Are Parliamentary debates and Legislative history admissible and, if so, what weight should they be given?

The Tribunal filed a factum on September 6, 2002, addressing all three of the issues put forward for consideration by the Court.

The *Burrell* and *Thomson* matters were reargued on November 13, and decisions were issued by the Court on January 28 (*Thomson v. Workers' Compensation Board* (N.S.), 2003 NSCA 14 and *Burrell v. Workers' Compensation Board (N.S.)*, 2003 NSCA 15). The Court held that *Salloum* should not be followed.

In its January 28 decision, the Court in *Thomson* noted that on the rehearing of the jurisdictional issue it had been provided with the full legislative history and record concerning GECA. It was fundamental that a decision of a three-judge panel of the Court should, for purposes of certainty and predictability, be followed. Nevertheless, both the Supreme Court of Canada and appellate courts had recognized that they retained authority in exceptional and compelling circumstances to revisit an earlier decision. In this case the evidence, including Hansard excerpts and legislative action, was found to have clarified the purpose of the legislation.

"It is quite clear from this additional material that it was Parliament's purpose to incorporate the procedural provisions, including rights of appeal, under provincial legislation, for workers in the federal sphere who are employed in the province."

-Thomson, 2003 NSCA 14, at para. 19

On the merits, the Court overturned the Tribunal's decisions in both *Thomson* and *Burrell*. The latter appeal was remitted to WCAT for a re-hearing.

DETERMINATIONS AS TO WHETHER A RIGHT OF ACTION IS BARRED

There were two other decisions of note issued by the Court of Appeal during the year. The first of these, *Lanteigne v. Workers' Compensation Board (N.S)*, 2002 NSCA 156 (December 10, 2002), upheld the Tribunal's Decision 2001-458-TPA and 2001-435-TPA, finding actions against an Employer to be barred in an application under s. 29 of the Act.

The Tribunal had found that the purpose for which a "multiple purpose" or "multiple use" machine is used determines its status as a motor vehicle. Since a "Grove Carrier" machine was stationery and being operated as a crane when it fell over, it was not operating as a motor vehicle within s. 28(2) of the Act, and the exception to the statutory bar did not apply.

"In my view, nothing in WCAT's interpretation of s. 28(2) of the Act, its statement that while operating as a crane the Grove Carrier was an integral part of the worksite, or its decision that the fall of the crane truck did not involve the "use or operation of a motor vehicle" and barring the civil actions of the appellant and Humphrey, meets the strict test for judicial intervention".

- Lanteigne v. Workers' Compensation Board (N.S), at para. 34

The Court permitted the Tribunal to file a factum in the appeal, which was heard October 11, 2002. The Tribunal's factum addressed three issues: the Tribunal's standing to make submissions; the nature of reviewable errors; and standard of review.

One of the issues considered by the Court was whether the Tribunal had made a jurisdictional error by hearing submissions and evidence on the existence of mandatory motor vehicle insurance and the insurance contract. On this issue, the Court held that it was unnecessary for WCAT to consider the evidence about

existence or extent of mandatory motor vehicle insurance coverage in deciding whether the civil actions were barred by s. 28(2) of the Act. Nevertheless, WCAT did not err in jurisdiction by hearing evidence and submissions on insurance coverage; that was not an essential part of its reasons and it was necessary to hear evidence to decide whether it had jurisdiction to refer to the *Insurance Act*.

SHIFT WORK MALADAPTION SYNDROME

In a second decision, *Michelin North America (Canada) Inc. v. Workers' Compensation Board (N.S.)* 2002 NSCA 166 (December 30, 2002), the Court overturned the Tribunal's determination in Decision 2000-378-AD (November 30, 2001), that the effects of sleep deprivation due to shift work were compensable under the *Workers' Compensation Act*.

On the merits of the appeal, heard December 3, the Court found that the Tribunal had erred in its application of a previous decision of the Court— *Metropolitan Entertainment Group v. Durnford* (2000), 188 N.S.R. (2d) 318 (C.A.).

"Durnford was clear, however, that to be compensable, symptoms causing disablement must arise out of and in the course of employment. The Tribunal erred in the present case by finding that Durnford held that the mere fact that a worker becomes symptomatic at work is sufficient to satisfy this requirement."

Michelin North America(Canada) Inc. v. Workers' Compensation Board (N.S.), at paras. 39 and 40

The Court found that the Worker's shift-work maladaption syndrome arose from a natural and innate intolerance—a personal characteristic inherent to the Worker—which produced a cognitive deficit. Unlike *Durnford*, the Court found that there was no evidence the Worker's condition was either caused or aggravated by the requirements of the job. In *Durnford*—a case involving lateral epicondylitis in a blackjack dealer—there was evidence that the Worker's disability was caused, at least in part, by employment.

Development of Practice Directions

During the past year, the Tribunal continued its work on the policy development project initiated in 2001. This project has been lead by Appeal Commissioner Michael Hadskis, the Tribunal's Policy Analyst, and Appeal Commissioner Sandy MacIntosh.

Having introduced three new Practice Directions in January 2002, the Tribunal turned its attention to the development of Practice Directions in the remaining areas previously identified for development in discussions between the Policy Analyst, Chief Appeal Commissioner, Registrar, and Appeal Commissioners.

By March 31, 2003, draft Practice Directions had been developed in several areas. In arriving at the drafts, each of the Practice Directions went through a number of developmental stages. Legal research was conducted on jurisdictional issues and the criteria of relevance to decision-making under each of the Practice Directions. As well, we undertook an extensive review of similar policy instruments from other tribunals. All of the draft Practice Directions were also reviewed, at least once, internally.

At present, the drafts are at differing stages of development.

NOTICE OF INTENTION TO PARTICIPATE IN APPEALS EMPLOYER ACCESS TO DOCUMENTS

The draft Practice Directions dealing with notification by employers of their intention to participate in Tribunal appeals, and employers' access to documents, have gone through a two-stage external consultation process. The first stage consisted of plain language reviews conducted by the Director of Communications for the Department of Justice and by the Editorial Services division of Communications Nova Scotia. The drafts were revised as a result of the feedback obtained from those reviews.

The second stage of the external consultation process involved soliciting stakeholder input. In November 2002, the Tribunal contacted hundreds of stakeholders to advise them of the draft Practice Directions and to invite them to comment on any aspect of the documents, including their understandability, fairness, completeness, and format. The stakeholders included, among others, various workers' and employers' groups, trade unions, the Workers' Advisers Program, the Workers' Compensation Board, and members of the Nova Scotia legal profession.

"Seeking feedback from those who have an interest in our appeals has been valuable in developing policies to better meet their needs."

- Sandy MacIntosh, Appeal Commissioner

Contact with the stakeholders was facilitated through the use of the mailing lists generated by the Workers' Compensation Review Committee (during its 2001–02 focused review of the workers' compensation program) and the Occupational Health and Safety division of the Nova Scotia Department of Environment and Labour. The draft Practice Directions were also posted on the Tribunal's and the Nova Scotia Barristers' Society's websites, and a notice concerning the drafts was published in the November 2002 issue of the Workers' Compensation Board publication, "Info at Work."

Following receipt of the stakeholder feedback, the draft Practice Directions were again reviewed internally. Finalization of these draft Practice Directions awaits the completion of Phase I of the Tribunal's initiative to review it case management practices (Case Management Review), slated for the end of May 2003. It is anticipated that changes in the Tribunal's current case management process could impact policy development in those subject areas.

SCHEDULING OF HEARINGS

A draft Practice Direction outlining the time periods for the scheduling of paper reviews and oral hearings was completed in fiscal 2002–03. However, the external consultation process was postponed while awaiting the results of Phase I of the Tribunal's Case Management Review.

MODE OF HEARING SUMMONSES AND ORDERS FOR PRODUCTION

The draft Practice Direction regarding mode of hearing recently underwent the plain language review process and the draft respecting summonses and orders for production will have undergone such a review by year end. When the latter document has completed the first stage of the external consultation process, the Tribunal will seek stakeholder input respecting both draft Practice Directions. After that feedback is received, they will undergo a further round of internal consultation. On receiving the Chief Appeal Commissioner's approval, they will then be finalized, implemented, and posted on the Tribunal's website. The Tribunal anticipates that this will take place by the summer of 2003.

DECISION LENGTH

In the past year, the Tribunal also refined its internal policy dealing with decision length. Section 252A of the *Act* provides that the Tribunal must issue a decision clearly stating its determination of an appeal and must state the reasons for the decision as briefly as possible without undue elaboration. The revised policy addresses the requirements of s. 252A and clarifies the guidelines for Appeal Commissioners respecting the preparation of decisions that meet those requirements. The revised internal policy has been adopted by the Tribunal for use by Appeal Commissioners in meeting the requirements of s. 252A of the Act.

Professional Development and Training

The Tribunal continued to focus on the professional development of its staff and Appeal Commissioners this year, through a number of conference attendances and training opportunities.

In addition to the skills development courses offered through the Public Service Commission and the Nova Scotia Department of Justice, Tribunal staff were fortunate to have the opportunity this year to attend several seminars hosted by the Workers' Compensation Board for its staff. Topics covered included "WCB 101"—an introduction to the workers' compensation system; telephone answering skills; and dealing with challenging clients. The Assistant to the Chief Appeal Commissioner also participated in a series of short courses offered by the Board as substantive background to claims adjudication under the *Workers' Compensation Act*.

"The Street Smart training and How to Deal with Difficult Calls was very beneficial to my job here as receptionist at WCAT. It helped me to deal with situations that I usually face on a daily basis. I feel that all staff, especially the staff who deal with the public, should have refresher courses every six months to keep skills up-to-date."

- Charlene Downey, Receptionist/Stenographer

In June, five Appeal Commissioners and the Chief Appeal Commissioner took part in the annual conference of the Council of Canadian Administrative Tribunals, in Ottawa. A highlight of the conference was a decision-writing seminar presented by a justice of the Ontario Court of Appeal.

As in the past, the conference was preceded by a meeting of the heads of workers' compensation appeal bodies across the country. The Chief Appeal Commissioner attended this meeting, as well as a second meeting of the group, where performance management and training for tribunal members was discussed. The Chief Appeal Commissioner also spoke at a panel session which addressed the issue of reconsideration of tribunal decisions. The Nova Scotia perspective was sought in light of the Workers' Compensation Review Committee recommendations for expansion of the Tribunal's reconsideration powers.

Appeal Commissioners also participated in the following:

- the Canadian Institute for Administrative Justice, Atlantic Roundtable, "Dialogue between Courts and Tribunals"—a meeting of tribunal members and the judiciary, held in Fredericton, in April
- the Canadian Bar Association - Nova Scotia, continuing legal education conference on civil litigation, in Halifax, in April
- the 4th International Conference on Law via the Internet, co-sponsored by the University of Montreal and the Department of Justice Canada, in October
- the Canadian Bar Association's, National Administrative Law Section annual continuing legal education conference, in Ottawa, in November

Three Commissioners attended a three-day introductory course in alternative dispute resolution—"Negotiation & Conflict Management," sponsored by Dalhousie University, in Halifax, in January, while three other Commissioners took part in the intensive, Middle Manager Leadership Development Program, offered by the Nova Scotia Public Service Commission, over a nine month period, beginning in September. Other Commissioners enhanced their professional skills through courses in business writing, time management, and internet usage.

Looking Ahead: Developing and Meeting Tribunal Goals in 2003–04

System Strategic Planning

In the coming year, we look forward to continuing our participation in the strategic planning process for the Workplace Safety and Insurance System. The system plan is expected to be complete by June 2003; however, the work of implementing the plan will continue over the course of the year. This work will include the exploration of new methods of appeal resolution, building on research the Tribunal has conducted in this area.

Tribunal Strategic Planning

The Tribunal's strategic plan will also be adopted this year, along with formal, agency performance measures. In addition, the Tribunal will consider its individual performance measures for Appeal Commissioners, in the context of the agency performance measures and our performance management model.

Case Management Review

The Tribunal's most significant initiative of the past year—Case Management Review—will be advanced in the new year as we enter Phase II of this project. Existing technology and resources, such as the Electronic Claim File, AS/400 and the "appeal data cube" contained in the Board's data warehouse, will be utilized to the full extent possible in the design and creation of an appeal tracking database. Introducing a database for purposes of managing appeals and tracking statistics is expected to increase the efficiency and effectiveness with which services can be offered to appeal participants.

In addition to the technological advances, a number of process improvements will be put into effect as part of the Case Management Review, many of which will serve to streamline the work of the Tribunal's staff. The Tribunal also hopes to enhance its communications with stakeholders through a review of its written communications and the development of plain language resources, such as additional appeal pamphlets. Another outstanding area for completion is the creation of consistent, detailed appeal codes for tracking the issues which arise in appeals.

Tribunal Practice Directions

The development of additional practice directions and procedures is also a Tribunal priority in the coming year, as it has been in the past two years. Areas which have yet to be completed include Practice Directions on mode of hearing and the issuance of summonses by the Tribunal; Notice of Intention to Participate in Tribunal appeals; Employer access to documents; a guide for Commissioners on the conduct of oral hearings; procedural guidelines for "right to sue" applications under s. 29 of the Act; the waiver of full participant status and the impact of failure to attend an oral hearing; and guidelines for the assignment of panel hearings, among others.

Code of Conduct for Appeal Commissioners

Review and implementation of a draft Code of Conduct for Appeal Commissioners continues to be a Tribunal goal which we hope to realize in the coming year.

Library and Research Resources

The Tribunal continues to work on enhancing its library and research capabilities. To this end, we are exploring the possibility of access to online decision database services, such as Quicklaw, at no cost to the Tribunal, and in exchange for the provision of Tribunal decisions which will be added to the Quicklaw databases. We also intend to explore the means by which Tribunal decisions may be made available to all appeal participants, at no charge, via the internet.

Decisions-Writing Training

Through the strategic planning process this year, the Tribunal identified a need for decision-writing training for its Commissioners. Renewed efforts will be made in the new year to engage appropriate resources to undertake specific training for Appeal Commissioners in this area of fundamental importance to our work. We anticipate that the system strategic plan may allow us opportunities to work cooperatively with the Board to provide joint training for Both Commissioners and Board staff.

To contact the Workers' Compensation Appeals Tribunal,

write:

PO Box 893
5151 Terminal Road
Halifax, NS B3J 2V9

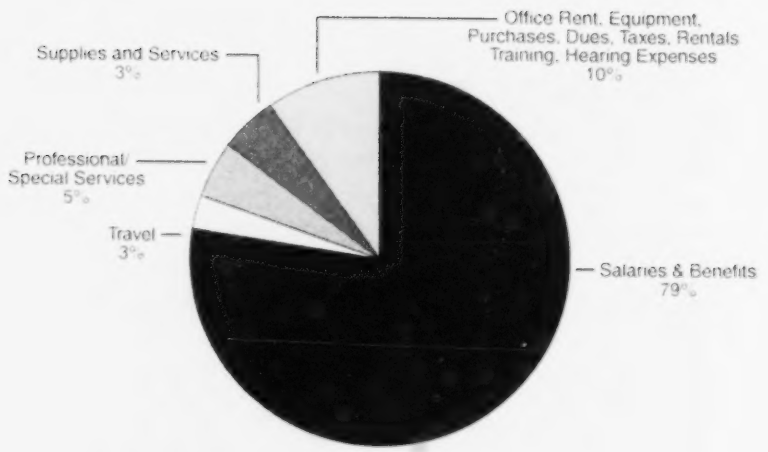
telephone: (902) 424-2250
or toll-free in Nova Scotia: 1-800-274-8281
fax: (902) 424-2321

Budget Expenditures for the Fiscal Year Ending March 31, 2003

CHART 1A

	Authority	Final Forecast	Actual Expenditures
Salaries & Benefits	$ 1,108,300.00	$ 1,146,400.00	$ 1,133,497.21
Travel	$ 32,000.00	$ 42,000.00	$ 39,319.53
Professional/ Special Services	$ 80,000.00	$ 74,000.00	$ 69,646.43
Supplies & Services	$ 43,500.00	$ 41,500.00	$ 37,607.94
Office Rent, Equipment Purchases, Dues, Taxes, Rentals, Training, Hearing Expenses	$ 155,300.00	$ 162,500.00	$ 141,777.08
Sub Total	$ 1,419,100.00	$ 1,466,400.00	$ 1,421,848.19
Less Recoveries	$ 9,600.00		
Total	**$ 1,409,500.00**	**$ 1,466,400.00**	**$ 1,421,848.19**

CHART 1B


Office Rent, Equipment, Purchases, Dues, Taxes, Rentals Training, Hearing Expenses 10%
Supplies and Services 3%
Professional/ Special Services 5%
Travel 3%
Salaries & Benefits 79%

Appeals Received

CHART 2A

	Previous Year	Current Year
April	80	85
May	78	72
June	70	71
July	77	96
August	96	65
September	71	68
October	84	80
November	100	83
December	98	129
January	93	58
February	70	61
March	87*	59
TOTALS	**1004**	**927**

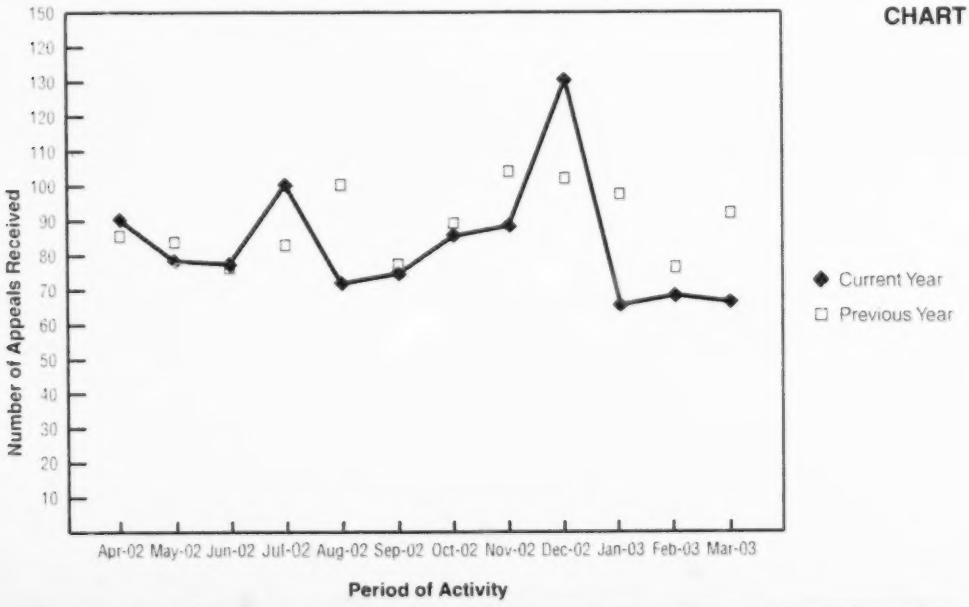
* Appeals received in March, 2002 adjusted to 87 from 89, subsequent to Annual Report for year ending March31, 2002.

Average number of appeals received monthly (2002–03) - 77

Average number of appeals received monthly (2001–02) - 84

Percentage decrease in appeals received over previous year - 8 per cent

CHART 2B



Final Decisions Rendered

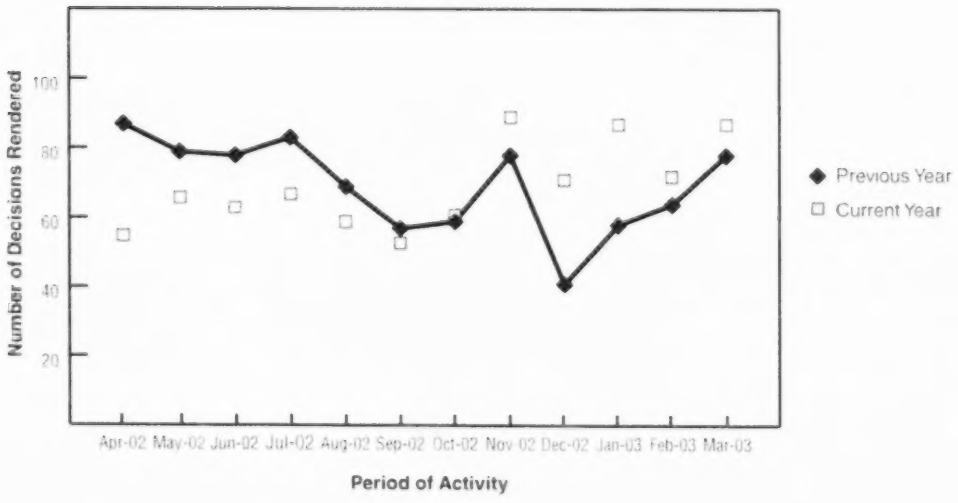
CHART 3A

	Previous Year	Current Year
April 2002	55	87
May 2002	66	79
June 2002	63	78
July 2002	67	83
August 2002	59	69
Sept. 2002	53	57
Oct. 2002	61	59
Nov. 2002	89	78
Dec. 2002	71	41
Jan. 2003	87	58
Feb. 2003	72	64
March 2003	87	78
TOTALS	**830**	**831**

Average number of decisions rendered per month (2002–03) - 70

Average number of decisions rendered per month (2001–02) - 69

CHART 3B



Appeals Outstanding by Year Received

Appeals Outstanding **CHART 4A**

Year Received	April 1, 2002 (Previous Year)	March 31, 2003 (Current Year)
1996-99	0	0
1999-2000 (Mar 31)	1	1
2000-01 (Mar 31)	13	8
2001-02 (Mar 31)	406	5
2002-03 (Mar 31)	N/A	384
Total	**420**	**398**

Final Decisions by Year Received

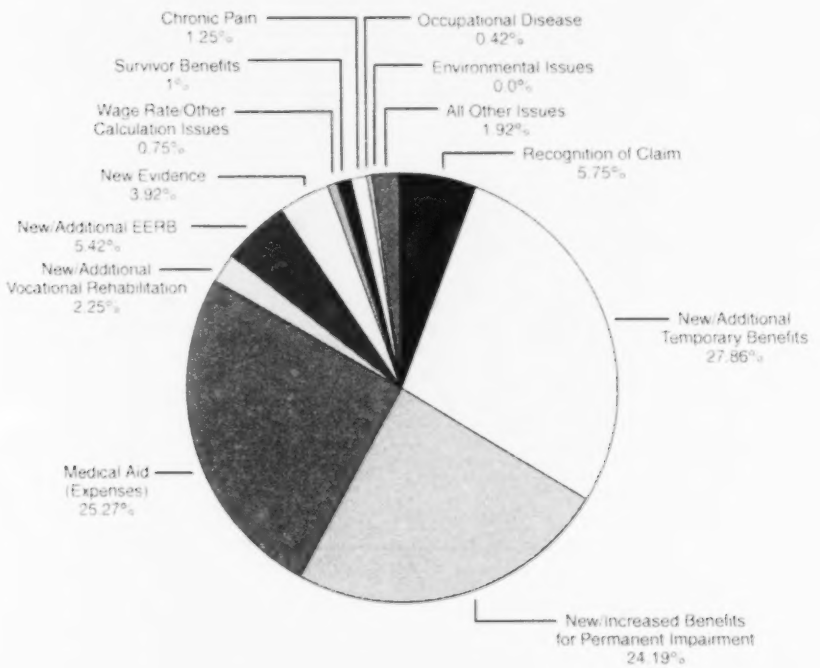
Year Appeal Received	Final Decisions	**CHART 4B**
1996-99	0	
1999-2000 (Mar 31)	0	
2000-01 (Mar 31)	5	
2001-02 (Mar 31)	401	
2002-03 (Mar 31)	425	

Decisions by Issue Categories: Worker Initiated Appeals

CHART 5A

Recognition of Claim	69
New / Additional Temporary Benefits	334
New / Increased Benefits for Permanent Impairment	290
Medical Aid (Expenses)	303
New / Additional Vocational Rehabilitation	27
New / Additional Extended Earnings Replacement Benefits (EERB) (incl. Estimated Earnings Capacity)	65
New Evidence	47
Wage Rate / Other Calculation Issues	9
Survivor Benefits	12
Chronic Pain	15
Environmental Illness	0
Occupational Disease	5
All Other Issues	23
Total of all Issue Categories	**1199**

CHART 5B

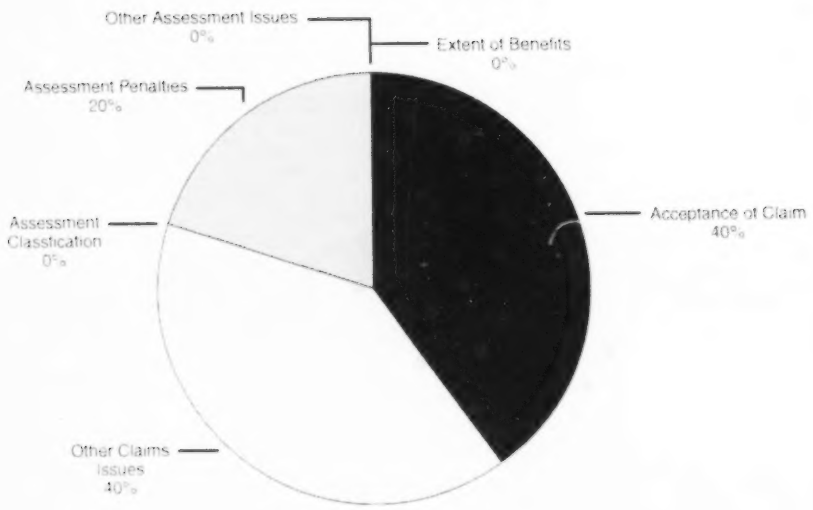


Decisions by Issue Categories: Employer Initiated Appeals

CHART 6A

Acceptance of Claim	2
Extent of Benefits	0
Assessment Classification	0
Assessment Penalties	1
Other Claims Issues	2
Other Assessment Issues	0
Subtotal of all Issue Categories	**5**

CHART 6B



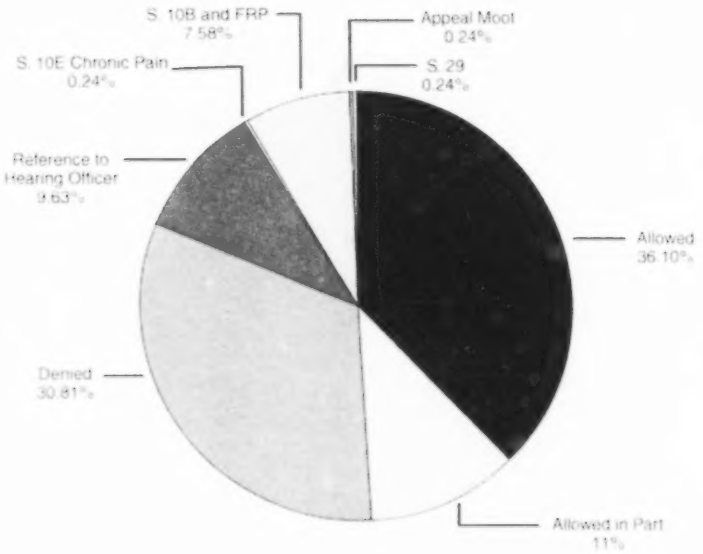
Decisions by Appeal Category and Outcome

CHART 7A

	Total Decisions by Outcome
Final Decisions	
Allowed	300
Allowed in Part	126
Denied	256
s. 10E (Chronic Pain)	2
s. 10B and FRP	63
s. 29	2
Appeal Moot	2
Reference to Hearing Officer	80
*Preliminary Decisions	3
*Correcting Decisions	11
Total All Decisions by Category	845
Total Final Decisions	**831**

* Preliminary and Correcting Decisions do not reduce the number of appeals outstanding.

CHART 7B



Mode of Hearing

CHART 8A

Month Decision Resolved	OHR/OHG	OHR/PRG	PRR/OHG	PRR/PRG	Total by Month
April 2002	40	13	3	31	87
May 2002	31	19	1	28	79
June 2002	31	19	0	28	78
July 2002	15	31	2	35	83
August 2002	28	22	0	19	69
September 2002	16	20	0	21	57
October 2002	18	16	2	23	59
November 2002	26	19	2	31	78
December 2002	16	12	0	13	41
January 2003	14	17	1	26	58
February 2003	25	16	2	21	64
March 2003	18	31	0	29	78
Totals by Type	**278**	**235**	**13**	**305**	**831**

Legend: OHR - Oral Hearing Requested PRR - Paper Review Requested
OHG - Oral Hearing Granted PRG - Paper Review Granted

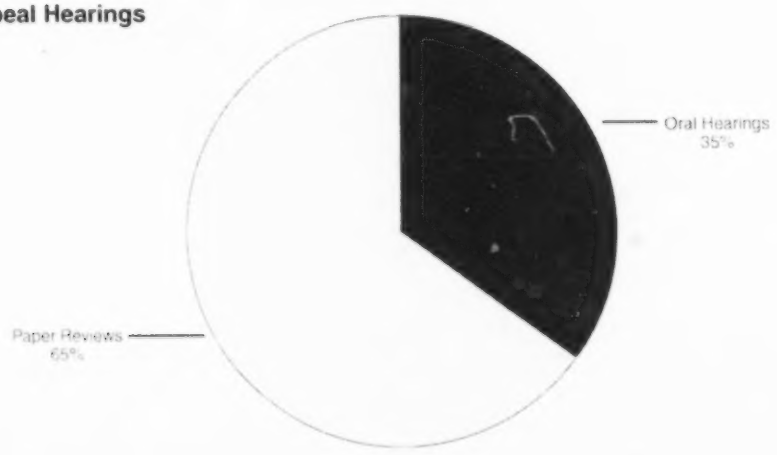
Total oral hearings – 291

Total paper review hearings – 540

Total hearings – 831

Oral hearing and paper review totals are in relation to the number of final decisions rendered per month.

Appeal Hearings **CHART 8B**

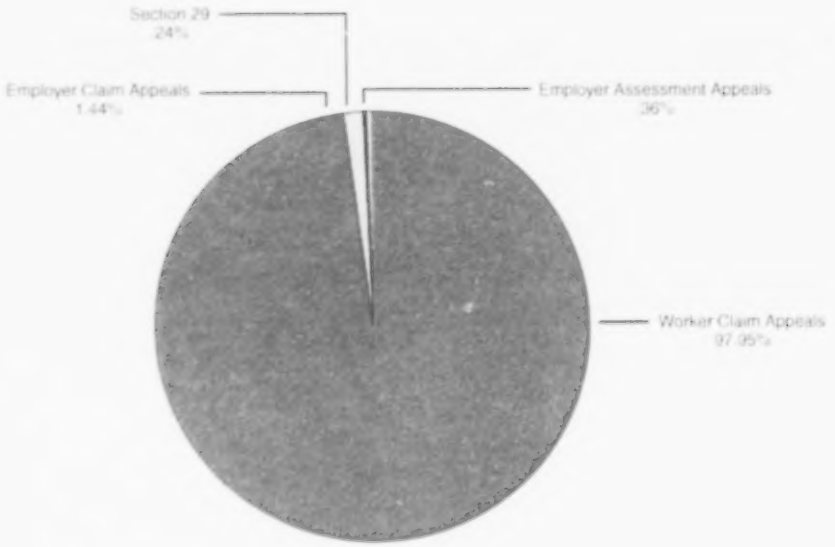


Decisions by Appellant Type

CHART 9A

	Paper Review	Oral Hearing	Total Appeals
Worker Claim Appeals	547	267	814
Employer Claim Appeals	7	5	12
Employer Assessment Appeals	0	3	3
Section 29 Applications	1	1	2
Total Appeal Decisions	**555**	**276**	**831**

CHART 9B

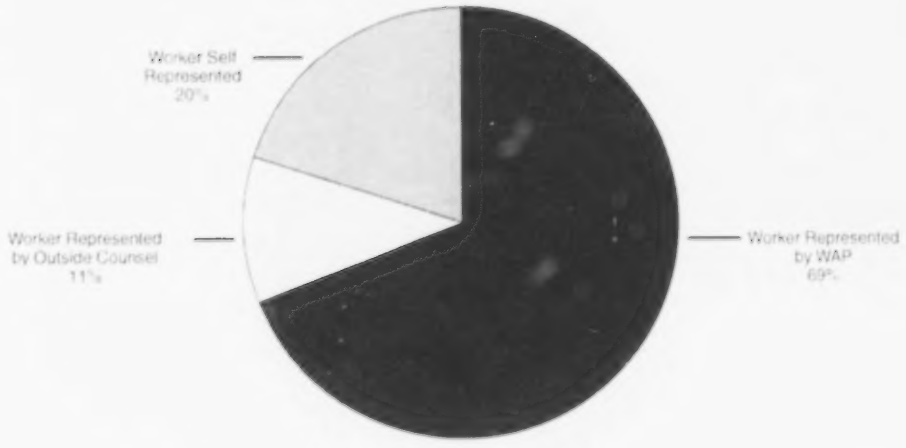


Decisions by Representation

Decisions by Appellant Type and Representation	Paper Review	Oral Hearing	Total Appeals
Worker appeals - worker represented by WAP	378	186	564
Employer appeals - worker represented by WAP	4	2	6
Worker appeals - worker self-represented	110	51	161
Employer appeals - worker self-represented	2	2	4
Worker appeals - worker represented by outside representative	56	35	91
Employer appeals - worker represented by outside representative	0	0	0
Section 29 Applications	1	1	2
Employer assessment appeal - employer represented by counsel	0	3	3
Employer assessment appeal - employer self-represented	0	0	0
Total Appeal Decisions	**551**	**280**	**831**

CHART 10A

CHART 10B



Appeals and Judicial Review Proceedings from WCAT Decisions

CHART 11

	Appeals before NSCA	Judicial Review	Supreme Court of Canada	All Proceedings
Adjourned Matters	210	23	2	235
Active Matters	9	0	0	9
Proceedings from Previous Year	219	23	2	244
New Appeals/Applications	89	4	0	93
Subtotal	308	27	2	337
Dispositions				
Allowed	3	0	0	3
Dismissed	1	0	0	1
Decisions on the merits	4	0	0	4
Leave Denied	4	0	0	4
Remittances by Consent	1	0	0	1
Discontinuances	3	1	0	4
Subtotal	12	1	0	13
Adjournments				
CP	278	1	0	279
GECA	0	25	0	25
SCC (CP)	0	0	2	2
Subtotal	279	26	2	306
Active Proceedings	18			18